

REMARKS

Claims 22-50 are pending. Claims 22, 33, 34, and 41-50 are allowed. Claim 24 is rejected under the judicially created doctrine of obviousness-type double patenting. Applicant submits herewith a terminal disclaimer to overcome the obviousness-type double patenting rejection.

Claims 23, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39 and 40 are rejected under 35 U.S.C. 101 as claiming the same invention as claims 1, 3, 5, 6, 7, 8, 13, 14, 15, 16, 17, 19, 20, 21, respectively, of U.S. patent 6,711,297 (the '297 patent). Reconsideration of the rejection is respectfully solicited. As the Examiner, points out, a "same invention" double patenting rejection is appropriate when newly claimed subject matter is "drawn to identical subject matter" of an issued U.S. patent. Identity of subject matter does not exist in the recited claims and therefore the rejection is inappropriate. Applicant acknowledges that an obviousness-type double patenting rejection may be appropriate, but any such rejection is now obviated by the terminal disclaimer submitted herewith.

The lack of identity between the pending claims and the claims of the '297 patent can be appreciated with reference to some exemplary claims. Pending claim 23 generally corresponds to issued claim 1 of the '297 patent, but does not include a limitation relating to "a level", as recited in the requesting operation of claim 1 of the '297 patent. Thus, pending claim 23 is not identical to claim 1 of the '297 patent and otherwise has a different scope that should be afforded to the applicant in the absence of prior art or other patentability criteria that makes the recited claim scope inappropriate.

Pending claim 25 is not identical to claim 3 of the '297 patent. Pending claim 25 omits the "the step of" limitations of claim 3 of the '297 patent. The "step of" language of claim 3 of the '297 patent may implicate 35 U.S.C. 112, paragraph 6 claim construction issues. Omission of this language, as done in pending claim 25, potentially results in different claim construction issues. Thus, identity of subject matter is also absent in this example. Accordingly, the rejection of claim 25 should be reconsidered.

As a final example, consider pending claim 26 and claim 5 of the '297 patent. Pending claim 26 has different limitations than claim 5 of the '297 patent. For example, claim 5 recites a

“requesting” operation, which is not recited in claim 26. Thus, again, there is a lack of identity between the pending claims and the claims of the ‘297 patent.

In sum, applicant has pointed out the lack of identity between the currently claimed subject matter and the subject matter of the ‘297 patent. Similar and/or additional differences are associated with the remaining claims that are pending. Thus, reconsideration of the same-type double patenting rejection is respectfully solicited. The enclosed terminal disclaimer should resolve any potential obviousness-type double patenting issues.

In view of the foregoing, all pending claims should be in a condition for allowance. If there are any residual issues that can be resolved with a telephone call, the Examiner is requested to contact the undersigned.

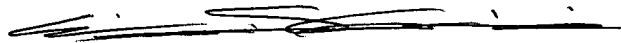
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COOLEY GODWARD LLP
ATTN: Patent Group
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Tel: (650) 843-5000
Fax: (650) 857-0663

WSG

Respectfully submitted,
COOLEY GODWARD LLP

By:



William S. Galliani
Reg. No. 33,885